

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Browne	Team: Squad #5	CCRB Case #: 201405893	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday 05/02/2014 6:10 PM	18 Mo. SOL 11-02-2015	EO SOL 11-02-2015	Location of Incident: [REDACTED]		Precinct: 101
Date/Time CV Reported Mon, 06/16/2014 9:11 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 06/16/2014 9:11 AM		

Complainant/Victim	Type	Home Address
1. [REDACTED]	Reporting Non-Witness	[REDACTED] Far Rockaway NY [REDACTED]
2. [REDACTED]	Victim	[REDACTED] Far Rockaway NY [REDACTED]
3. [REDACTED]	Victim	[REDACTED] Far Rockaway NY [REDACTED]

Witness(es)	Home Address
1. [REDACTED]	[REDACTED] Far Rockaway NY [REDACTED]
2. [REDACTED]	[REDACTED] Far Rockaway NY [REDACTED]
3. [REDACTED]	Unknown

Subject Officer(s)	Shield	TaxID	Command
1. POM [REDACTED]	[REDACTED]	[REDACTED]	101 PCT
2. POM Lukasz Solis	14287	943832	101 PCT
3. SGT [REDACTED]	[REDACTED]	[REDACTED]	101 PCT
4. POM [REDACTED]	[REDACTED]	[REDACTED]	101 PCT
5. POM [REDACTED]	[REDACTED]	[REDACTED]	101 PCT
6. POM [REDACTED]	[REDACTED]	[REDACTED]	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A . SGT [REDACTED]	Abuse of Authority: Sgt. [REDACTED] stopped [REDACTED] outside [REDACTED] on May 2, 2014.	A . Unsubstantiated
B . SGT [REDACTED]	Abuse of Authority: Sgt. [REDACTED] questioned [REDACTED] and [REDACTED] outside [REDACTED] on May 2, 2014.	B . Exonerated
C . SGT [REDACTED]	Abuse of Authority: Sgt. [REDACTED] threatened to notify the Administration for Children's Services outside [REDACTED] on May 2, 2014.	C . Unsubstantiated
D . SGT [REDACTED]	Abuse of Authority: Sgt. [REDACTED] threatened to arrest [REDACTED] and [REDACTED] outside [REDACTED] on May 2, 2014.	D . Unsubstantiated
E . POM [REDACTED]	Abuse of Authority: PO [REDACTED] stopped [REDACTED] on [REDACTED] on May 31, 2014.	E . Substantiated
F . SGT [REDACTED]	Abuse of Authority: Sgt. [REDACTED] questioned [REDACTED] at the 101st Precinct stationhouse on May 31, 2014.	F . Exonerated

Officer(s)	Allegation	Investigator Recommendation
G . SGT [REDACTED] [REDACTED]	Other Misconduct Noted: Sgt. [REDACTED] [REDACTED] failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.	G . Other Misconduct
H . POM [REDACTED] [REDACTED]	Other Misconduct Noted: PO [REDACTED] [REDACTED] failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.	H . Other Misconduct
I . POM Lukasz Solis	Other Misconduct Noted: PO Lukasz Solis failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.	I . Other Misconduct
J . POM [REDACTED] [REDACTED]	Other Misconduct Noted: PO [REDACTED] [REDACTED] failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.	J . Other Misconduct
K . POM [REDACTED] [REDACTED]	Other Misconduct Noted: PO [REDACTED] [REDACTED] failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.	K . Other Misconduct
L . POM [REDACTED] [REDACTED]	Other Misconduct Noted: PO [REDACTED] [REDACTED] failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.	L . Other Misconduct

Case Summary

At approximately 6:10 p.m. on May 2, 2014, [REDACTED] and [REDACTED] were standing on the sidewalk outside Mr. [REDACTED] house, located at [REDACTED] in Far Rockaway, when Sgt. [REDACTED] accompanied by PO Lukasz Solis, PO [REDACTED] PO [REDACTED] PO [REDACTED] and allegedly other unidentified officers, approached and ordered them to stand against the fence (**Allegation A**). Sgt. [REDACTED] then allegedly told Mr. [REDACTED] that he had information regarding guns in the house and asked what he was doing there (**Allegation B**). When Mr. [REDACTED] replied that he and Mr. [REDACTED] were just talking, Sgt. [REDACTED] presented a piece of paper and asked Mr. [REDACTED] to sign for consent to search the house. Mr. [REDACTED] refused to do so. Shortly thereafter, Mr. [REDACTED] mother, [REDACTED] arrived and Sgt. [REDACTED] explained the same to her, similarly asking her to sign a consent form to search the house (**subsumed within Allegation B**). It was alleged that over the course of the next several hours, Sgt. [REDACTED] and his officers remained outside the house, preventing anyone from entering unless [REDACTED] gave consent to search. During this time, it was alleged that Sgt. [REDACTED] heard a baby crying inside the house and stated that ACS could take the child away (**Allegation C**). Sgt. [REDACTED] also allegedly told [REDACTED] that if she did not sign the consent form, he would return with warrants to arrest everyone there (**Allegation D**). However, the officers ultimately left the scene without entering the location or making any arrests.

At approximately 12:24 a.m. on May 31, 2014, Mr. [REDACTED] and an unidentified individual were walking near the corner of [REDACTED] and [REDACTED] Street in Queens when they were approached by PO [REDACTED] and PO Solis. PO [REDACTED] allegedly ordered both civilians to stand against the police car (**Allegation E**) and asked them if they had anything on them (**subsumed within Allegation E**). The individual allegedly replied that he had nothing on him, at which point PO [REDACTED] told him to leave. Mr. [REDACTED] allegedly replied that he had a box cutter and pepper spray in his front hoodie pouch, so PO [REDACTED] instructed him to slowly remove them and asked why he had those items. Mr. [REDACTED] stated that he had been mugged a few days prior and needed them for his protection. PO [REDACTED] allegedly then frisked Mr. [REDACTED] entire body and stated that Mr. [REDACTED] seemed familiar, so he asked for his full name, which Mr. [REDACTED] provided. PO [REDACTED] then called for assistance and Sgt. [REDACTED] PO [REDACTED] and PO [REDACTED] responded to the scene. Sgt. [REDACTED] PO [REDACTED] and PO Solis then transported Mr. [REDACTED] to the stationhouse where Sgt. [REDACTED] again allegedly asked him to sign a consent form to search his home (**Allegation F**). When he refused, Sgt. [REDACTED] reportedly went to [REDACTED] to speak to [REDACTED] though she was not home.

Mediation, Civil and Criminal Histories

- Due to Mr. [REDACTED] arrest and incarceration, this case was deemed ineligible for mediation. Mr. [REDACTED] has several prior criminal convictions dating back to 2006 (encl. 30A-Ap), including for five counts of criminal possession of a weapon as the result of an arrest on October 24, 2009 (encl. 30Y-Ab). No notice of claim has been filed with the City of New York regarding this case (encl. 32A).

Civilian and Officer CCRB Histories

- Sgt. [REDACTED] has been a member of the NYPD for twelve years and has been a subject in four prior cases (encl. 5A-B). One allegation of a frisk as part of case #201304499 was substantiated against him, for which he was issued instructions. However, his CCRB history does not reveal any pattern relevant to this case.
- PO [REDACTED] has been a member of the NYPD for seven years and has been a subject in ten previous cases (encl. 6A-B). Two allegations—one of a stop and one of a retaliatory summons—were substantiated against him as the result of case #200816433.

- PO Solis has been a member of the NYPD for eight years and has been a subject in four previous cases (encl. 7A). Although he had no substantiated allegations against him, he has once been cited for failure to prepare a memo book entry.
- PO [REDACTED] has been a member of the NYPD for ten years and has been a subject in five previous cases (encl. 8A). One allegation of a vehicle search has been substantiated against him and he has once been cited for failure to prepare a memo book entry.
- PO [REDACTED] has been a member of the NYPD for ten years and has been a subject in seven previous cases (encl. 9A). One allegation of a vehicle search has been substantiated against him and he has once been cited for failure to prepare a memo book entry.
- PO [REDACTED] has been a member of the NYPD for fourteen years and has been a subject in fourteen previous cases (encl. 10A-C). Although he had no substantiated allegations against him, he has once been cited for failure to prepare a memo book entry.
- This is the first CCRB complaint filed by [REDACTED] [REDACTED] [REDACTED] or [REDACTED] [REDACTED] (encl. 11A-C).

Potential Issues

Mr. [REDACTED] scheduled two separate appointments on July 18, 2014 and August 15, 2014, respectively. However, he missed both of these appointments without calling in advance to cancel or reschedule. Similarly, [REDACTED] [REDACTED] scheduled her first interview for July 15, 2014. After [REDACTED] this appointment without calling in advance to cancel or reschedule, two phone calls were placed and two letters were mailed on July 17, 2014 and July 23, 2014, respectively, to reschedule the appointment. However, as of the date of this report, neither [REDACTED] [REDACTED] nor Mr. [REDACTED] has contacted the CCRB to provide a statement.

Although both the civilians and the officers confirmed that several uniformed officers were also outside the house on May 2, 2014, none of officers interviewed could identify these additional officers and no police documentation provided any identifying information. Therefore, the investigation was unable to obtain additional witness officer statements.

Findings and Recommendations

Allegations Not Pleaded

- Although it was alleged that Mr. [REDACTED] was detained with Mr. [REDACTED] that the threat of arrest included Mr. [REDACTED] and [REDACTED] [REDACTED] and that an officer used offensive sexual language towards [REDACTED] [REDACTED] these allegations could not be verified without sworn statements from either of those victims. Therefore, none of the above is pleaded.
- Although Mr. [REDACTED] alleged that the individual with whom he was walking was also stopped and questioned, he was unable to provide his name or contact information, so the CCRB was unable to contact him. Therefore, no allegations are pleaded on his behalf.
- Although [REDACTED] [REDACTED] alleged that the officers would not allow her or anyone else to enter the house, there was no indication that they were not otherwise free to leave the location. Therefore, no stop allegation is pleaded on her behalf.
- Despite conflicting testimonies from Mr. [REDACTED] and PO [REDACTED] the frisk and search occurred, by both accounts, after it was determined that Mr. [REDACTED] was under arrest. Regardless of the legality of the arrest, because they would have taken place incident to arrest, no frisk or search allegations are pleaded.

Investigative Findings and Recommendations

Allegation A—Abuse of Authority: Sgt. [REDACTED] stopped [REDACTED] outside [REDACTED] on May 2, 2014.

Allegation C—Abuse of Authority: Sgt. [REDACTED] threatened to notify the Administration for Children's Services outside [REDACTED] on May 2, 2014.

Allegation D—Abuse of Authority: Sgt. [REDACTED] threatened to arrest [REDACTED] and [REDACTED] outside [REDACTED] on May 2, 2014.

Mr. [REDACTED] (encl. 17A-E) alleged that upon approach, Sgt. [REDACTED] instructed him to stand against the fence. [REDACTED] (encl. 15A-F) confirmed that when Sgt. [REDACTED] approached her, he stated that he had Mr. [REDACTED] detained. Both civilians alleged that during the subsequent interaction, Sgt. [REDACTED] heard a baby crying inside the house and stated that ACS could remove the child from the home. Both civilians also alleged that Sgt. [REDACTED] threatened to arrest everyone present if they did not sign a consent to search form.

Conversely, Sgt. [REDACTED] (encl. 19A-F) denied ever detaining anyone at the location or preventing anyone from either entering the house or leaving the location. He did not recall speaking to any civilian other than [REDACTED] and denied ever threatening to call ACS for a child or to arrest any civilian. Although the investigation determined that PO [REDACTED] (encl. 20A-F) and PO Solis (encl. 21A-G), were present for at least part of Sgt. [REDACTED] visit, neither had any recollection of responding to the location or interacting with any civilians as alleged. PO [REDACTED] (encl. 22A-D) and PO [REDACTED] (encl. 23A-F) both recalled stopping by the location on their way to obtain a search warrant for a separate location. Although they both reportedly saw Sgt. [REDACTED] speaking to [REDACTED] neither heard any specific conversation, including any of the alleged threats to arrest anyone or call ACS. Both officers maintained that they remained at the scene for no more than five minutes. Only PO [REDACTED] recalled there being multiple civilians on scene.

Had Sgt. [REDACTED] instructed Mr. [REDACTED] to stand against the fence, thereby stopping him, he would have needed to have reasonable suspicion that Mr. [REDACTED] had committed, was committing, or was about to commit a crime. As discussed in the following section, the information that caused Sgt. [REDACTED] to respond to the location would not have provided reasonable suspicion for such a stop. However, because of conflicting statements between the civilians and officers, as well as a lack of independent witness testimony, the investigation was unable to determine by a preponderance of the evidence whether that stop occurred. For the same reasons, the investigation was unable to determine whether Sgt. [REDACTED] threatened to call ACS or to arrest anyone. Therefore, it is recommended that **Allegations A, C, and D** be closed as *Unsubstantiated*.

Allegation B—Abuse of Authority: Sgt. [REDACTED] questioned [REDACTED] and [REDACTED] outside [REDACTED] on May 2, 2014.

Mr. [REDACTED] alleged that upon approach, Sgt. [REDACTED] informed him that a confidential informant reported guns inside the house and asked him what he was doing there. When Mr. [REDACTED] reportedly replied that he was just chatting with Mr. [REDACTED], Sgt. [REDACTED] requested that he sign a consent to search form. Mr. [REDACTED] refused to do, allegedly prompting Sgt. [REDACTED] to ask to speak with the owner of the house. [REDACTED] was coincidentally approaching on foot at that time, and it is undisputed that Sgt. [REDACTED] approached her, explained that he had information regarding a gun in the house, and requested that she sign a consent form to search the premises.

Although Sgt. [REDACTED] denied speaking to or questioning anyone other than [REDACTED] he stated that he initially asked her if she was the owner of the house. When she confirmed that she was, he

then made his request for consent to search. Sgt. [REDACTED] testified that the request was made as a result of a Gun Stopper tip that a male resident of [REDACTED] was keeping a gun in his bedroom at that location. Neither PO [REDACTED] nor PO Solis had any recollection of the circumstances upon which Sgt. [REDACTED] responded to the location. Both PO [REDACTED] and PO [REDACTED] confirmed that a Gun Stopper tip prompted Sgt. [REDACTED] to go to the location, though neither recalled any details of the tip.

A call to NYPD's Investigative Support Division (encl. 18A), which operates the Gun Stopper Hotline, confirmed that tip #164 was provided by an anonymous caller at 6:10 p.m. who stated that an approximately 25-year-old black male who stood 6'1", weighed 200 lbs., and was nicknamed "[REDACTED]" possessed an illegal handgun on the second floor of [REDACTED] in Far Rockaway. No further information was provided. At the time of the incident, [REDACTED] was a 24-year-old black male who stood 6'3", weighed 200 lbs., and lived at [REDACTED].

In the absence of further corroboration or indication of impending criminal activity, an anonymous tip that an individual possesses a gun does not provide reasonable suspicion to conduct a stop, even if a description of that individual is provided. However, such a tip does provide founded suspicion for an officer to make both general requests for information as well as common-law inquiries that include accusatory questions. *People v. Rios*, 27 Misc. 3d 963 (Sup. Ct., Kings Co. 2010) (encl. 1A-F). A request for consent to search constitutes a common-law inquiry, as it implies criminality. *People v. Hollman*, 79 N.Y.2d 181 (1992) (encl. 2A-H).

Although it is disputed as to whether Sgt. [REDACTED] even spoke to Mr. [REDACTED] the alleged question about what he was doing at the house would have constituted a general request for information and the alleged request to consent to a search of the house would have constituted a common-law inquiry, as did the undisputed request for [REDACTED] to do the same. Given that the anonymous tip, which was provided immediately prior to Sgt. [REDACTED] visit to the location, provided a name and description of the perpetrator as well a specific location of the alleged illegal firearm, there was sufficient founded suspicion to ask not only general information about Mr. [REDACTED] presence there, but also the more intrusive requests to search the premises. In light of these circumstances, regardless of whether or not Mr. [REDACTED] was questioned, the alleged questions would have been justified and it is, therefore, recommended that **Allegation B** be closed as *Exonerated*.

Allegation E—Abuse of Authority: PO [REDACTED] stopped [REDACTED] on [REDACTED] and [REDACTED] on May 31, 2014.

Mr. [REDACTED] alleged that while walking to the store, PO [REDACTED] stopped him by telling him to stand against his police car and asking him if he had anything on him, to which Mr. [REDACTED] admitted to carrying a box cutter and pepper spray in his front hoodie pouch because he had been attacked a few days earlier and wanted them for protection. Mr. [REDACTED] was arrested (encl. 25A-D) for criminal possession of a weapon in the third and fourth degrees.

Conversely, PO [REDACTED] maintained that while driving his vehicle slowly near the above location, which was well lit by street lights, he observed Mr. [REDACTED] walking with a box cutter visibly sticking out of his front hoodie pouch. Although PO [REDACTED] could not describe exactly what part of the box cutter was exposed, he affirmed that he immediately knew it was a box cutter based on prior arrests involving them. As such, he stopped the vehicle and approached Mr. [REDACTED] with the intention to arrest him for criminal possession of a weapon. After immediately informing Mr. [REDACTED] that he was being arrested, PO [REDACTED] reportedly frisked and searched Mr. [REDACTED] at which point he also recovered pepper spray.

PO Solis acknowledged being present with PO [REDACTED] for Mr. [REDACTED] arrest, but did not recall any details of the interaction such as observations that led to the stop or actions taken as a result. Sgt. [REDACTED] who was called to the scene to verify the arrest, confirmed that PO [REDACTED] told him upon arrival that he had arrested him after observing Mr. [REDACTED] walking with a box cutter sticking out of his pocket. PO [REDACTED] also reported to him that the pepper spray was discovered during the search incident to his arrest. Sgt. [REDACTED] did not recall any further details of their conversation.

Possession of a box cutter alone is not illegal and is only deemed a crime when it is intended to be used unlawfully against another. Penal Law §265.01(1-2) (encl. 3A-C). In order to stop a civilian, an officer must have reasonable suspicion that the person has committed, is committing, or is about to commit a crime. People v. Hollman, 79 N.Y.2d 181 (1992).

Although PO [REDACTED] maintained that he determined Mr. [REDACTED] to be under arrest as soon as he saw the box cutter sticking out of his pocket, possession of a box cutter alone is not a crime, so an arrest made on those grounds alone would not have been legitimate. Furthermore, PO [REDACTED] cited no other observations, such as threatening behavior or knowledge of prior convictions, that would indicate criminality regarding the box cutter, meaning that the basis for the arrest only came after questioning Mr. [REDACTED] about his purpose for carrying the box cutter and the subsequent discovery of pepper spray. Although the sequence of events are somewhat disputed, both PO [REDACTED] and PO [REDACTED] agree that a stop/arrest occurred prior to questioning. Therefore, in the absence of additional factors, PO [REDACTED] would not have had sufficient reasonable suspicion at that point to believe that Mr. [REDACTED] was committing a crime.

In light of the above, the investigation determined by a preponderance of the evidence that PO [REDACTED] was unjustified in stopping Mr. [REDACTED] and it is recommended that **Allegation E** be closed as **Substantiated**.

Allegation F—Abuse of Authority: Sgt. [REDACTED] questioned [REDACTED] at the 101st Precinct stationhouse on May 31, 2014.

Mr. [REDACTED] alleged that after being arrested and taken to the 101st Precinct stationhouse, Sgt. [REDACTED] again asked him to sign a consent form to search his home at [REDACTED]. PO [REDACTED] was allegedly present for this request. Although Sgt. [REDACTED] and PO [REDACTED] denied ever making or hearing any other officer make this request, they both confirmed that they then went to [REDACTED] to speak to [REDACTED] about the matter and investigate the existence of a gun there. When no one answered the door, the officers left without taking any further action.

Regardless of the legitimacy of the stop, Mr. [REDACTED] had already been arrested for criminal possession of a weapon with intent to use when Sgt. [REDACTED] allegedly asked him to sign a consent to search form. Although the request is disputed, it is not implausible that such a request would have been made given the officers' preexisting knowledge regarding a gun at Mr. [REDACTED] house and the fact that the officers then went to that location for further investigation. Apart from the original anonymous tip, no officer provided any additional factors lead them to believe there was a gun inside Mr. [REDACTED] home.

As explained above, a request for consent to search constitutes a common-law inquiry requiring founded suspicion that criminality is afoot. People v. Hollman, 79 N.Y.2d 181 (1992).

Although the anonymous tip was provided almost one month prior to the second request for consent to search the house, Mr. [REDACTED] arrest for criminal possession of a weapon presented the officers with new indication that Mr. [REDACTED] could be in possession of another weapon. Taken in conjunction with the specificity of the original tip, which named and described Mr. [REDACTED] the investigation determined that Sgt. [REDACTED] had founded suspicion to make the request for consent to search. Therefore, it is recommended that **Allegation F** be closed as **Exonerated**.

Allegation G—Other: Sgt. [REDACTED] failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.

Allegation H—Other: PO [REDACTED] failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.

Allegation I—Other: PO Lukasz Solis failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.

Allegation J—Other: PO [REDACTED] failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.

Allegation K—Other: PO [REDACTED] failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.

Allegation L—Other: PO [REDACTED] failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.

Sgt. [REDACTED] acknowledged responding to [REDACTED] and speaking to [REDACTED] Both PO [REDACTED] and PO [REDACTED] acknowledged at least stopping their vehicle at the location and observing Sgt. [REDACTED] speak to [REDACTED] Although PO Solis and PO [REDACTED] had no recollection of responding to the scene, Sgt. [REDACTED] testified that they were there with him, which was corroborated by Mr. [REDACTED] who claimed his arresting officer named “Ellen” was present on May 2, 2014. Further, although PO [REDACTED] believed that he was in court all day on May 2, 2014, PO Solis’ memo book indicated that he was partnered with PO [REDACTED] for that tour and that PO [REDACTED] was the operator of their vehicle. Given this record as well as the unlikelihood that PO [REDACTED] was in court for his entire eight and a half hour tour, the investigation determined that PO [REDACTED] was present at [REDACTED] on May 2, 2014 and witnessed at least part of the incident. Additionally, despite their vague recollections, PO Solis, PO [REDACTED] and PO [REDACTED] all acknowledged responding to the scene of Mr. [REDACTED] arrest on May 31, 2014. However, none of the above officers recorded any entries in their memo books regarding these respective incidents.

An officer is required to document in his memo book assignments received and tasks performed, as outlined in Patrol Guide Procedure 212-08 (encl. 4A-C).

Due to the failures of Sgt. [REDACTED] PO [REDACTED] PO Solis, PO [REDACTED] PO [REDACTED] and PO [REDACTED] to prepare memo book entries for their actions and observations regarding these incidents, it is recommended that they each be cited for ***Other Misconduct***.

POD: _____

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date